

SEALING ANIMAL WELFARE INTO FREE TRADE: COMMENT ON *EC-SEAL* *PRODUCTS*

L I N G C H E N *

The *EC-Seal Products* case is a good illustration of the conflict between free trade and animal welfare.¹ On 22 May 2014, the World Trade Organization (WTO) Appellate Body issued its report, upholding the Panel’s finding that the EU Seal Regime was “necessary to protect public morals” but also concluding that the EU had not justified this regime under Article XX (General Exceptions) of the General Agreement on Tariffs and Trade 1994 (GATT).² In doing so, the Appellate Body seemed to draw an “equilibrium line” between the EU’s concern of animal welfare protection and Canada and Norway’s demand for free trade for seal products. Based on the reports from the Panel and the Appellate Body, this paper seeks to explore the issue of animal welfare by addressing its relationship with free

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¹ *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products (Complaint by Canada and Norway)* (2014), WTO Doc WT/DS400/AB/R, WT/DS401/AB/R (Appellate Body Report), online: WTO <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds401_e.htm> [EC-Seal Products].

² WTO, “European Communities—Measures Prohibiting the Importation and Marketing of Seal Products” (8 October 2014), online: <www.wto.org/english/tratop_e/dispu_e/cases_e/ds401_e.htm> [EC Seal Summary].

trade, reviewing the analysis of *EC-Seal Products* and the GATT Article XX, as well as analyzing the unilateral feature of the animal welfare rules under the multilateral WTO framework.

I. ANIMAL WELFARE AND FREE TRADE

Animal welfare and international trade necessarily interact. Countries can take advantage of legislation on animal welfare to restrict or prohibit imported products that violate animal welfare rules so as to establish an effective animal welfare protection mechanism for the domestic market. Even though the animal welfare movement emphasizes the moral issues of anti-cruelty to animals, in the process of law-making countries usually need to consider other factors such as food quality, traditional culture, and economic factors. Therefore, the trade mechanism that involves animal welfare protection not only concerns moral issues of how to ethically treat animals, but also has a wide range of social impact such as the protection of food quality, the conservation of custom and cultural heritage, and the development of relevant industries. Currently, animal welfare rules are mainly adopted by countries with a high degree of economic development, food safety, and food supply. These rules have impacts that extend beyond the fields of animal trade such as farm animals, wild animals and pets; they also influence animal products such as food, clothing and cosmetics. Their restrictions on international trade should not be underestimated.

Traditionally, domestic laws regulate animal welfare protection. Countries adopt domestic animal welfare regulations to prevent foreign products that violate animal welfare regulations from being imported into their domestic markets. As these legislations reflect local values and traditions, the values and traditions respected in certain areas may not have a shared understanding in the international community. Countries should be cautious when introducing animal welfare rules into international trade regulation. For the WTO Member States, the trade measures regarding animal welfare protection have to be consistent with the relevant WTO rules.

The GATT Article XX may provide a justification for the animal welfare rules. Article XX (b) permits countries to adopt measures “necessary to protect...animal...life or health” if “such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a

disguised restriction on international trade”.³ That article has been applied in some high profile trade and animal welfare disputes. For example, the Panel in the 1991 *Tuna-Dolphin* case⁴ rejected the US’s proposal to justify its embargo on imports of tuna from countries that had not satisfied the US dolphin protection standards under Article XX (b), in that the GATT did not allow the “extra-territoriality” of one country’s domestic laws in another country even on the grounds of the protection of animal health.⁵ In another *Tuna-Dolphin* dispute,⁶ the Panel conceded that a country could use Article XX to justify trade restrictions on account of environmental reasons outside its territory but was still concerned that the way Article XX was interpreted may challenge Member States’ rights of access to markets.⁷ In 1998, the Appellate Body decided a complaint lodged by several Asian countries against the US’ ban on imports of shrimp caught by fishing methods that endangered certain sea turtles.⁸ The Appellate Body largely overturned the decisions in the *Tuna-Dolphin* cases and drew upon a two-tiered approach to “establish a more sensitive balance between trade and [animal welfare]”.⁹ Animal welfare rules may become moral barriers if they are used improperly. As such, the imported animal products may be reviewed to determine whether the animal welfare rules of the importing country have been complied with. However, the importing country may not inquire as to whether its exporters comply with the same rules when they export animal products to other countries. These discriminatory treatments may restrict imports and facilitate exports, thereby causing unfair competition in international trade.

³ *General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 (entered into force 1 January 1948) [GATT 1947].

⁴ *United States—Restrictions on Imports of Tuna (Complaint by Mexico)* (1991), GATT Doc DS21/R, 39th Supp BISD (1993) 155, online: <sitemaker.umich.edu/drwcasebook/files/tuna-dolphin_i.pdf>.

⁵ WTO, “Mexico etc versus US: ‘Tuna-Dolphin’”, online:

<https://www.wto.org/english/tratop_e/envir_e/edis04_e.htm> [Mexico US Tuna]; Michael J Trebilcock, *Understanding Trade Law* (Cheltenham: Edward Elgar Publishing, 2011) at 163 [Trebilcock, *Understanding*].

⁶ *United States—Restrictions on Imports of Tuna (Complaint by the European Communities and the Netherlands)*

(1994), GATT Doc DS29/R (Panel Report), online: WTO <https://www.wto.org/gatt_docs/English/SULPDF/91790155.pdf>.

⁷ Trebilcock, *Understanding*, *supra* note 5 at 163–64.

⁸ *United States—Import Prohibition of Certain Shrimp and Shrimp Products (Complaint by India et al.)* (1998),

WTO Doc WT/DS58/AB/R (Appellate Body Report), online: WTO

<https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm> [United States—Shrimp]; Trebilcock, *Understanding*, *supra* note 5 at 164–65.

⁹ Trebilcock, *Understanding*, *supra* note 5 at 167.

The EU has a broad and advanced body of animal welfare legislation, with member states adopting more stringent rules.¹⁰ The EU has enshrined the notion of animal welfare in Article 13 of the Treaty on the Functioning of the European Union as one of its goals:

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.¹¹

Animals are defined as “sentient beings” that can feel pleasure and pain rather than as pure commodities for use or trade. Accordingly, the EU introduced a series of animal welfare regulations and directives to view animals as “sentient beings”, ensuring the protection of their welfare and improving the standards of protection within the EU region. For example, EC Directive 98/58/EC was adopted to lay down “minimum standards for the protection of animals bred or kept for farming purposes.”¹²

As of the WTO Committee on Agriculture’s second special session in 2000, the EU has been an active advocate of adding animal welfare standards into the WTO framework.¹³ The EU proposals included the adoption of a new multilateral agreement regarding animal welfare and the creation of a labelling regime to inform consumers of choices amongst products that met different animal welfare standards.¹⁴ A number of developing countries such as Bolivia, India, Pakistan, Thailand and Uruguay rejected these proposals. They asserted the priority should be placed on reducing human poverty and starvation, given that food supply was still inadequate and food safety needed improving in these regions. They also emphasized that “countries should be

¹⁰ Harald Grethe, “High Animal Welfare Standards in the EU and International Trade: How to Prevent Potential ‘Low Animal Welfare Havens?’” (2007) 32:3 Food Policy 315 at 317.

¹¹ “Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union” (26 October 2012), *EUR-Lex*, online: <eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT> at art 13 [Consolidated Treaty].

¹² “Council Directive 98/58/EC of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes”, *EUR-Lex*, at art 1, online: <eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31998L0058>.

¹³ United Nations, FAO Legal Office, *Legislative and Regulatory Options for Animal Welfare*, by Jessica Vapnek & Megan Chapman of the Development Law Service (Rome: Food and Agriculture Office of the United Nations, 2010) at 16 [Vapnek & Chapman].

¹⁴ *Ibid* at 17.

left to set their own standards”¹⁵ and feared that the labelling scheme may become a disguised barrier to international trade.¹⁶

The recent case, *EC Seal Products*, demonstrated again the contentious relationship between animal welfare and free trade. Since 2009, the EU has operated a legislative scheme (the EU Seal Regime) through adopting Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on the prohibition of importing and marketing processed and unprocessed seal products (the Basic Regulation), together with Commission Regulation (EU) No. 737/2010 to specify implementation rules for the Basic Regulation (the Implementation Regulation).¹⁷ Exemptions to this prohibition may be available for seal products obtained from seals hunted by Inuit or other indigenous communities (the IC exception) and seals hunted for marine resource management purposes (the MRM exception), as well as the seal products that are brought by travelers into the EU for personal use (the Travelers exception).¹⁸ By adopting this unilateral trade measure, the EU attempted to require its trading partners to follow the EU animal welfare standards. However, this scheme has a substantial impact on the seal products exported from Canada and Norway. They lodged complaints to the WTO, arguing that these exceptions provide privileged access to the seal products from the EC and certain third countries such as Greenland.¹⁹ These complaints have been examined and decided by the WTO Panel and the Appellate Body.

II. *EC-SEAL PRODUCTS* AND THE GATT ARTICLE XX(A) (PUBLIC MORALS) AND CHAPEAU

On 22 May 2014, the WTO’s Appellate Body circulated its report on the *EC Seal Products* dispute to Member States.²⁰ In its report, the Appellate Body decided the EU Seal Regime does not lay down “product characteristics” and reversed the Panel’s findings that the EU seal regime constitutes a “Technical Regulation” under the Agreement on Technical

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *EC-Seal Products*, *supra* note 1 at para 1.1-1.4; Michael J Trebilcock, *Advanced Introduction to International Trade Law* (Beaverton, OR: Ringgold, 2015) at 164 [Trebilcock, *Advanced Introduction*].

¹⁸ *EC-Seal Products*, *supra* note 1 at para 1.4.

¹⁹ Trebilcock, *Advanced Introduction*, *supra* note 17 at 173.

²⁰ EC Seal Summary, *supra* note 2.

Barriers to Trade (the TBT Agreement) Annex 1.1.²¹ The Appellate Body upheld the Panel's conclusion that the EU Seal Regime is inconsistent with GATT Articles I: 1 (the Most Favored Nation Principle or the MFN Principle) and III: 4 (the National Treatment) as the EU Seal Regime failed to "immediately and unconditionally" extend the same market access advantage that Greenland has to Canada and Norway, as well as impaired the competitive relationship between the Canadian and Norwegian seal products and the comparable EU products.²² This discriminatory treatment requires justification under the GATT Article XX.²³

In order to reduce conflicts between free trade and other social values, the WTO established ten exceptions in the GATT Article XX. These exceptions seem to provide a justification for the departure from the free trade rules. In the *Reformulated Gasoline* case,²⁴ the Appellate Body adopted a two-tiered approach to interpret and apply Article XX. First, the measure at stake was considered for whether it was consistent with one or more of the enumerated exceptions in Article XX. Second, the measure at stake was evaluated for whether its application violated one or more of the conditions in the chapeau. The conditions included that the disputed measure cannot be an "arbitrary or unjustifiable discrimination" or a "disguised restriction on international trade".²⁵

The Appellate Body continued the two-tiered analysis in *EC Seal Products*. In determining whether the interest pursued by the EU Seal Regime fell within the exceptions enumerated in Article XX, the Appellate Body first examined the objective of the EU Seal Regime. In the Panel report, the EU Seal Regime was confirmed to "address the moral concerns of the EU public with regard to the welfare of seals."²⁶ Norway challenged the Panel's finding that "the 'sole objective' of the EU Seal Regime is to address EU public moral concerns regarding seal welfare."²⁷ It particularly contended that "the Panel committed a number of legal and factual errors in reaching the conclusion

²¹ Trebilcock, *Advanced Introduction*, *supra* note 17 at 173.

²² *Ibid.*

²³ *Ibid.*; EC Seal Summary, *supra* note 2.

²⁴ *United States—Standards for Reformulated and Conventional Gasoline (Complaint by Bolivarian Republic of Venezuela)* (1996), WTO Doc WT/DS2/AB/R (Appellate Body Report), online: WTO <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm>.

²⁵ Trebilcock, *Understanding*, *supra* note 5 at 164–65.

²⁶ *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products (Complaint by Canada and Norway)* (2013), WTO Doc WT/DS400/R, WT/DS401/R (Panel Report), online: WTO <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm> at para 7.410.

²⁷ *EC—Seal Products*, *supra* note 1 at para 5.141.

that the EU Seal Regime does not pursue objectives relating to the protection of IC interests and the promotion of MRM interests.”²⁸ By reviewing the findings of the Panel and the arguments of the parties concerned, the Appellate Body rejected Norway’s contention and decided that “the principal objective of the EU Seal Regime is to address EU public moral concerns regarding seal welfare, while accommodating IC and other interests so as to mitigate the impact of the measure on those interests.”²⁹

The Appellate Body then assessed whether the EU Seal Regime was “necessary” to protect such public morals.³⁰ Canada and Norway challenged the Panel’s conclusion on the necessity of applying this regime to protect public morals under Article XX (a).³¹ Even though the Panel had acknowledged the conclusion from *Brazil-Retreaded Tyres* that “the contribution of the ‘ban’ should be material due to its trade restrictiveness,”³² the Appellate Body analyzed the *Tyres’* particular context and did not consider that “[the approach in that case] sets out a generally applicable standard requiring the use of a pre-determined threshold of contribution in analysing the necessity of a measure under Article XX of the GATT 1994.”³³ Accordingly, the Appellate Body rejected Canada and Norway’s contention that “the Panel failed to establish that the EU Seal Regime makes a material contribution to the objective of addressing EU public morals concerns regarding seal welfare.”³⁴ As well, the Appellate Body upheld the Panel’s finding that “the analysis under Article XX (a) of the GATT 1994 should examine the prohibitive and permissive aspects of the EU Seal Regime”³⁵ and that “the alternative measure is not reasonably available.”³⁶ The Appellate Body concluded that the EU Seal Regime was necessary to protect public morals, thereby provisionally being justified within the meaning of Article XX (a).³⁷ This decision seems to recognize animal welfare as “an aspect of public morals under [the] GATT Article XX (a).”³⁸

²⁸ *Ibid.*

²⁹ *Ibid* at para 5.167.

³⁰ *Ibid* at para 5.169.

³¹ *Ibid* at para 5.172.

³² *Ibid* at para 5.209.

³³ *Ibid* at para 5.213.

³⁴ *Ibid* at para 5.172.

³⁵ *Ibid* at para 5.193.

³⁶ *Ibid* at para 5.279.

³⁷ *Ibid* at para 5.289–90; Trebilcock, *Advanced Introduction*, *supra* note 17 at 174.

³⁸ Rob Howse, Joanna Langille & Katie Sykes, “Sealing the Deal: The WTO’s Appellate Body Report in EC–Seal Products” (2014) 18:12 *American Society of International Law*, online:

As regards the chapeau of Article XX, Canada and Norway contended that “the Panel erred in applying the same test to determine the existence of arbitrary or unjustifiable discrimination under the chapeau of Article XX as it had applied in determining whether the measure was inconsistent with the TBT Agreement Article 2.1.”³⁹ The Appellate Body conducted a more meticulous analysis on the discrimination element under the chapeau of Article XX. It then found that the EU had failed to show that “the manner in which the EU Seal Regime treats seal products derived from IC hunts as compared to seal products derived from ‘commercial’ hunts can be reconciled with the objective of addressing EU public moral concerns regarding seal welfare.”⁴⁰ Additionally, it decided that the “subsistence” and “partial use” criteria of the IC exception were ambiguous, as well that the EU had not “made ‘comparable efforts’ to facilitate the access of the Canadian Inuit to the IC exception as it did with respect to the Greenlandic Inuit.”⁴¹ Therefore, the Appellate Body reversed the Panel’s reasoning under the chapeau but concluded, as did the Panel, that “the European Union ha[d] not justified the EU Seal Regime under Article XX (a) of the GATT 1994.”⁴²

III. THE UNILATERAL FEATURE OF THE ANIMAL WELFARE RULES AND THE MULTILATERAL COOPERATION UNDER THE WTO

The Appellate Body’s decision on the application of the GATT Article XX shows that even if Member States wish to protect the cardinal public morals such as animal welfare protection, they should ensure non-discriminatory market access and avoid unfair trade measures. In this report, some concerns need further discussion such as whether public morals within certain areas can trump free trade and non-discriminatory obligations under international trade system, whether a country can adopt unilateral measures to conduct a “moral output” and further to require other countries to abide with this moral.

www.asil.org/insights/volume/18/issue/12/sealing-deal-wto%E2%80%99s-appellate-body-report-ec%E2%80%93seal-products.

³⁹ Trebilcock, *Advanced Introduction*, *supra* note 17 at 174.

⁴⁰ *EC-Seal Products*, *supra* note 1 at para 5.338.

⁴¹ Trebilcock, *Advanced Introduction*, *supra* note 17 at 174; *EC-Seal Products*, *supra* note 1 at para 5.338.

⁴² *EC-Seal Products*, *supra* note 1 at para 5.339; Trebilcock, *Advanced Introduction*, *supra* note 17 at 174.

The Appellate Body Report denotes that “the protection of animal welfare for moral reasons can be a legitimate reason to restrict trade.”⁴³ The reasoning and conclusion of this report, however, reflect the attempt of the Appellate Body to draw an “equilibrium line” between animal welfare and free trade. On the one hand, the Appellate Body denied the legitimacy of parts of the EU Seal Regime. For example, it decided that the IC exception and the MRM exception violated the MFN Principle and the National Treatment, and that the measures at stake did not satisfy the chapeau of the GATT Article XX. On the other hand, the Appellate Body recognized the legitimacy and importance of the objective to protect animal welfare. For example, it decided that the objective to protect seals fell within the public morals under the GATT Article XX (a). In other words, although the Appellate Body decided that the EU had not justified the EU Seal Regime under the GATT Article XX (a), this does not necessarily mean that other animal welfare measures cannot satisfy the chapeau of Article XX or that promoting animal welfare is inconsistent with the WTO rules. This decision simply addresses the point that all the measures to protect animal welfare have to conform to the existing WTO rules such as ensuring non-discriminatory market access or avoiding unfair trade measures.

The EU Seal Regime and other animal welfare measures reflect the value of humane treatment of animals. The consensus on this value has not been reached within the WTO Member States. Animal welfare measures are mainly adopted by developed countries. In particular, the EU is a pioneer in the movement of advocating for animal welfare and has developed regulations on animal protection. They restrict or prohibit the imports that are inconsistent with their requirements for feeding, transporting and butchering animals. These measures have a huge impact on other countries’ animal products exports, particularly for developing countries that are less likely to comply with the feeding, transporting and butchering requirements. Due to the highly disciplined rules on tariffs, the WTO Member States turn to other domestic non-tariff barriers (including animal welfare policies) to protect their domestic animal products. The unilateral feature of these measures, however, influences or even impairs the exports of animal products from other countries, and especially undermines the competitiveness of animal products from developing countries, which may not have adequate financial or technological resources to support the same standard for animal protection as developed countries do.

⁴³ Howse, *supra* note 38.

It is true that the beliefs and values of the protection of animal welfare should be affirmed and the WTO Member States are also allowed to require imported products to observe their domestic regulations out of legitimate regulatory objective. However, different cultures and religious beliefs, and even different degrees of economic development may lead to different views on the protection of animal welfare. Some areas reach a unanimous opinion on anti-cruelty to animals and protecting animal welfare through a long-term cultural accumulation. While in other areas, the notion of animal welfare protection has not been firmly established because of the impacts of economy, culture and history, and other factors. In this context, the conducts such as applying unilateral animal welfare measures, outputting certain values, asserting their extraterritorial operation and requiring trading partners to comply with these measures would be criticized and opposed by other countries. For example, the EU's unilateral measure on the aviation carbon tax incurs universal opposition.

The reason why the EU Seal Regime aroused worldwide attention partly lies in its unilateral feature against the multilateral cooperation advocated by the WTO. The preface of the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement) provides that the WTO is established to “develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,”⁴⁴ and emphasizes that member states should “[enter] into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.”⁴⁵ The Marrakesh Agreement Article III specifies one function of the WTO as to “facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements.”⁴⁶ The WTO advocates and supports multilateral trade cooperation while the implementation of unilateralism may diminish this multilateral cooperation.

The WTO Panel and the Appellate Body attach great importance to multilateralism in resolving disputes amongst Member States. In interpreting

⁴⁴ *Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, 1867 UNTS 154 at para 5 (entered into force 1 January 1995).

⁴⁵ *Ibid* at para 4.

⁴⁶ *Ibid* at art 3.

“public morals”, for example, the Panel in the *Online Gambling* case agreed that “the content of these concepts for Members can vary in time and space, depending upon a range of factors, including prevailing social, cultural, ethical and religious values.”⁴⁷ At the same time, the Panel not only simply examined whether the public morals have been disputed in the alleged Member States (the US and Antigua and Barbuda), but also reviewed whether other Member States have the same or similar public morals. As their investigation suggested, Israel and the Philippines had used public morals as grounds to restrict the trade of gambling-related goods and services,⁴⁸ as well as Estonia, Hong Kong, Iceland, Norway and Uruguay had already restricted or prohibited online gambling.⁴⁹

When Member States wish to trigger the exception of “the conservation of exhaustible natural resources”,⁵⁰ the Panel and Appellate Body examine whether the values protected by the measures at stake are pursued by both the parties in the dispute and other Member States. For example, according to the Appellate Body in the *Shrimp-Turtles* case, one reason why the US violated the chapeau of the GATT Article XX was its failure to “engage the appellees, as well as other Members exporting shrimp to the United States, in serious, across-the-board negotiations with the objective of concluding bilateral or multilateral agreements for the protection and conservation of sea turtles, before enforcing the import prohibition against the shrimp exports of those other Members.”⁵¹ The Panel and the Appellate Body need to prove the existence of public morals by reviewing the domestic laws of the concerned countries and other Member States, as well as referring to the relevant provisions of international agreements or declarations. These measures not only verify the substantial relationship between the measures at stake and the public morals based on concrete evidence, but they also echo the multilateral features of the WTO and its agreement on a multilateral trade.

The animal welfare legislations have a potential to be disguised trade protection even if they are created to protect animal welfare. The Appellate Body recognized the objective (to protect seals’ welfare) of the EU Seal

⁴⁷ *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services (Complaint by Antigua and Barbuda)* (2004), WTO Doc WT/DS285/R (2004) at para 6.461 (Panel Report), online: <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm>.

⁴⁸ *Ibid* at para 6.471.

⁴⁹ *Ibid* at 239, n 914.

⁵⁰ GATT 1947, *supra* note 3 at art XX (g).

⁵¹ *United States—Shrimp*, *supra* note 8 at para 166.

Regime as legitimate, but it also addressed that creating and applying the IC exception and the MRM exception may undermine this legitimacy. To some extent, animal welfare measures may constitute latent non-tariff barriers opposed by the WTO. As green trade barriers have both the rationality to protect the environment and the irrationality to disguise trade protection, animal welfare measures may have the duality of protecting animal welfare nominally and protecting trade essentially. The EU Seal Regime advocated for the classification of animals as sentient beings and thus they should be given humanitarian treatment. However, the general prohibition of the EU Seal Regime denotes that, regardless of whether the hunting of seals is conducted in a humane manner or not, this regime prohibits both import and sale of seal products. The extent of such a restriction on trade may exceed the necessity defined by the Panel and the Appellate Body. Meanwhile, the three exceptions under this regime allow the import and sale of part of seal products, which may undermine the legitimacy of this regime's objective to protect animal welfare.

Possible solutions, beyond adopting a unilateral legislation, may be to protect animal welfare within certain regions and to extend this protection to include a wider range and facilitate the creation of effective cooperation mechanisms. Countries can consult with each other before making domestic trade requirements. For example, even if the US had banned imports of shrimp from countries that had not adopted a regulatory regime to require installing and employing turtle excluder devices in fishing for shrimp, the US signed a convention with five Latin American countries to provide them with guidelines of how to meet these requirements.⁵² The cooperative approach echoes the multilateral cooperation addressed by the WTO. Nevertheless, in the establishment of cooperation mechanisms, countries may have to consider diversified needs for animal welfare protection, as well as special and differential treatments to developing countries. Additionally, public morals could also be addressed by implementing a labelling regime with animal welfare standards to ensure an informed customer's choice. If public morals are so unified within certain regions that people cannot tolerate seal products being obtained in an inhumane way, then customers may voluntarily refuse purchasing seal products without a recognized label. For example, the Panel in *Tuna-Dolphin (1991)* confirmed the US's policy of allowing tuna products to be sold with a "dolphin-safe" label.⁵³ But it should be noted that this

⁵² Trebilcock, *Understanding*, *supra* note 5 at 164, 166.

⁵³ Mexico US Tuna, *supra* note 5.

labelling regime conforms to the WTO rules and avoids new disguised barriers to international trade.

CONCLUSION

Animal welfare has not been generally accepted by the WTO Member States. Animal welfare measures are adopted by certain countries but it does not necessarily reflect public morals outside these countries. Countries may be selective to these measures in accordance with their own interests. Within the existing WTO rules, a unilateral feature does not necessarily render an animal welfare measure illegitimate. However, free trade and multilateral cooperation are fundamental to the WTO. Allowing unilateralism or moral output would diminish the WTO objective. The requirements of non-discrimination, necessity and rationality have to be considered in dealing with animal welfare disputes. The WTO Panel and Appellate Body are more likely to hold cautious attitudes in reviewing animal welfare measures before countries have reached a consensus on these unilateral measures.